

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SOUTHWESTERN BELL MOBILE SYSTEMS  
LLC

Plaintiff

v.

CHRISTOPHER P. KUHN,

Defendant

MAGISTRATE JUDGE Bowler

COMPLAINT  
AND JURY DEMAND  
RECEIPT #  
AMOUNT \$ 50.00  
SUMMONS ISSUED yes  
LOCAL RULE 4.1     
WAIVER FORM     
MCF ISSUED     
BY DPTY. CLK. FOL  
DATE 7/15/04

**INTRODUCTION**

Plaintiff seeks a declaratory judgment setting forth the parties' rights and obligations under a written lease agreement. Plaintiff's claim for relief arises out of Defendant's contention that he has the right to take possession of a cellular telephone tower and equipment located in West Falmouth, Massachusetts. The Plaintiff contends that the Defendant has no such right, and brings this suit in order to obtain a declaration of its ownership rights in the cellular tower and equipment.

**PARTIES**

1. Plaintiff, Southwestern Bell Mobile Systems LLC ("SBMS") is a Delaware Limited Liability Company with a principal place of business at 5565 Glenridge Connector, Atlanta, Georgia.

2. Defendant Christopher P. Kuhn ("Kuhn") is an individual with a principal place of residence at 578 Huckins Neck Road, Centerville, Massachusetts.

**JURISDICTION AND VENUE**

3. Jurisdiction is conferred upon this court by 28 U.S.C. §1332(a)(2) because the amount in controversy exceeds \$75,000 and there is diversity between the parties. Venue is

proper in this jurisdiction under 28 U.S.C. §1391(a) because all of the events giving rise to the claim occurred in Massachusetts.

### **ALLEGATIONS**

4. On or about March 8, 1996, Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One entered into a written lease agreement (the "Agreement") with Kuhn for the lease of certain real property in West Falmouth, Massachusetts for the purpose of constructing a cellular telephone tower thereon. A true and complete copy of the Agreement is attached hereto as Exhibit A.

5. SBMS is the corporate successor to Southwestern Bell Mobile Systems, Inc., and the assignee of all of Southwestern Bell Mobile Systems, Inc.'s rights and obligations under the Agreement. SBMS is an indirect, wholly owned subsidiary of Cingular Wireless LLC. Cingular Wireless LLC is a nationwide provider of Commercial Mobile Radio Service as defined by the Federal Communications Commission.

6. The Agreement provided for the lease of certain real property in West Falmouth, Massachusetts by SBMS from Kuhn for the purpose of constructing a cellular tower and placing related equipment thereupon. The Agreement provided for an initial ten (10) year term with options to renew for two additional five (5) year terms, for a total maximum lease term running through 2016.

7. The Agreement further provided that, upon termination of the Agreement, Kuhn shall take possession of the equipment building, tower, tower foundation, generator, security fence and power meter that SBMS was to place upon the property for purposes of operating a mobile cellular site.

8. The Agreement further provided that SBMS was to make monthly lease payments to Kuhn.

9. At all times, SBMS made the appropriate lease payments to Kuhn.

10. Mr. Kuhn has since claimed that he did not receive all of the lease payments, and claims that he is entitled to take possession of the cellular tower and equipment immediately.

11. The cellular tower and equipment at issue is critical to Cingular Wireless LLC's ability to continue to provide Commercial Mobile Radio Service to the public, and to continue to operate the federally mandated "E-911" public safety system.

### **COUNT I**

#### **DECLARATORY JUDGMENT**

12. SBMS repeats and incorporates herein the allegations contained in Paragraphs 1 through 11.

13. SBMS seeks a determination of the parties' respective rights and obligations under the Agreement pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201-2202 and the Massachusetts Declaratory Judgment Act, M.G.L., c. 231A §1-2.

14. A dispute has arisen between SBMS and Kuhn as to their respective rights and obligations under the Agreement.

15. SBMS contends that the Agreement is in full force and effect; that SBMS is not in breach thereof; and that the cellular tower and equipment continue to be the personal property of SBMS. Kuhn contends that SBMS is in default of the Agreement and that title to SBMS' personal property has passed to him.

16. An actual controversy exists between the parties as to their legal rights and obligations under the Agreement, and with respect to the tower and equipment at issue. The rights of the parties under the Agreement can best be determined by declaratory judgment.

**COUNT II**

**MASS.GEN.L. C. 93A, SECTIONS 2 AND 11**

17. SBMS repeats and incorporates herein the allegations contained in Paragraphs 1 through 16.

18. At all relevant times, Kuhn was engaged in trade or commerce within the Commonwealth of Massachusetts.

19. Kuhn's actions giving rise to SBMS' claims were made primarily and substantially within the Commonwealth of Massachusetts.

20. Upon information and belief, Kuhn has fabricated a lease dispute between the parties in order to (i) unlawfully terminate SBMS' rights in the real property; (ii) unlawfully claim possession of SBMS' tower and equipment; or (iii) create unlawful leverage in order to renegotiate the terms of the Agreement. Such actions constitute unfair or deceptive acts or practices on the part of Kuhn while engaged in trade or commerce, giving rise to a violation of Mass.Gen.L. c. 93A Sections 2 and 11.

21. As a result of Kuhn's violation of Mass.Gen.L. c. 93A Sections 2 and 11, SBMS has suffered damage.

WHEREFORE, Plaintiff respectfully requests that this court:

A) Declare that:

- i) SBMS is not in default under the Agreement;
- ii) The Agreement is in full force and effect;
- iii) The cellular tower and related equipment continue to be the personal property of SBMS; and
- iv) Kuhn has no right to title of the tower or related equipment.

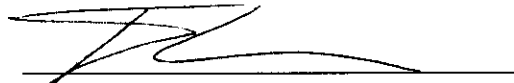
B) Enter an award of damages in SBMS' favor under Mass.Gen.L. c. 93A, Sections 2 and 11;

- C) Treble any award of damages and award attorney's fees and costs pursuant to Mass.Gen.L. c. 93A, Sections 2 and 11;
- D) Grant the Plaintiff its reasonable attorney's fees and costs for having to bring this action; and
- E) Grant such other and further relief as this Court deems just and proper.

**SBMS demands a trial by jury on all issues so triable.**

Southwestern Bell Mobile Systems LLC

By its attorneys.



Jonathan Sablone, BBO #632998  
Juan A. Concepcion, BBO #658908  
NIXON PEABODY LLP  
100 Summer Street  
Boston, MA 02110-2131  
(617) 345-1000

Dated: July 15, 2004

BOS1399588.1

JS 44 (Rev. 3/99)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Southwestern Bell Mobile Systems LLC

## DEFENDANTS

Christopher P. Kuhn

(b) County of Residence of First Listed Plaintiff Atlanta, GA  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jonathan Sablone  
Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110  
(617) 345-1000

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☒ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☒ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☒ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6 DEF

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 150 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Declaratory Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Greater than  
\$75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Southwestern Bell Mobile Systems LLC v. Christopher P. Kuhn
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Jonathan SabloneADDRESS Nixon Peabody LLP, 100 Summer Street, Boston, MA 02110TELEPHONE NO. (617) 345-1000